HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.26185 of 2006

Dated:06.03.2007

Between:

G.Narayana.

…Petitioner.

and

State of Andhra Pradesh and others.

…Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.26185 of 2006

ORDER:

The petitioner functioned as President of the 3rd respondent-Society between 1987 and 1990. The 3rd respondent had established a pesticides shop. The petitioner states that he was in-charge of the said shop, and on the basis of a resolution passed by the Society, he adjusted honorarium of Rs.300/-, per month, and deducted a commission of 0.5% on the sale proceeds. The 2nd respondent initiated surcharge proceedings against the petitioner under Section 60 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short "the Act"). Two orders, dated 31.03.1998 and 28.08.2004, are said to have been passed, for different amounts. The appeals preferred by the petitioner are said to have been dismissed. The 3rd respondent filed E.P.No.1 of 2004, before the 2nd respondent, for realisation of the amount. The petitioner seeks a direction to the 2nd respondent to furnish accounts disclosing the margin money, on the sales in the pesticides shop, run by the 3rd respondent, and the honorarium payable to him, as President, and to direct him to adjust

the said amounts from the amount indicated under the surcharge orders in the execution proceedings.

Heard learned Counsel for the petitioner and learned Government Pleader for Co-operation.

Broadly stated, the relief claimed by the petitioner is in the form of a counter-claim, or set off. The liability against the petitioner in the surcharge order has become final. In case the petitioner is of the view that the 3rd respondent was liable to pay any amount towards honorarium, or the percentage of sales, he ought to have instituted separate proceedings, under Section 61 of the Act, or made a counter-claim in the surcharge proceedings. He did not do either. Even where counter-claim or set off are permissible in law, they have to be presented in the original proceedings themselves. The question of making a counter-claim at the execution stage, does not arise.

Hence, the Writ Petition is dismissed. It is, however, made clear that it shall be open to the petitioner to avail such remedies, as are open to him in law. There shall be no order as to costs.

Dt.06.03.2007 **L.NARASIMHA REDDY, J**

GJ